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## COLLINS SEITZ: A NOBLE CAREER

STEPHEN B. BURBANK†

One who would honor Collins Seitz faces two problems at the outset: the lack of space in which to do justice to a very long and very distinguished career in the service of the law—a career that, happily, will continue—and the inadequacy of testimonial rhetoric to capture that career. The constraints of the forum render the first problem insurmountable, although in combination these tributes suggest the measure of the man's accomplishments. The answer to the second, it seems to me, lies in following Chief Judge Seitz's example by letting his actions speak for themselves.

## I

In 1950, as the young vice chancellor of Delaware, Collins Seitz was the first judge in the country to order the desegregation of the undergraduate programs of a state university.<sup>1</sup> In 1952, Seitz was the first judge in the county to order a segregated white public school to admit black children,<sup>2</sup> in a decision that Thurgood Marshall hailed as "the first real victory in our campaign to destroy segregation of American pupils in elementary and high schools."<sup>3</sup>

We would say that, given the temper of those times, such decisions required courage. Spinoza would say that they demonstrated nobility.<sup>4</sup> That Collins Seitz is possessed of uncommon courage, as well as uncommon commitment to the goal of racial justice, is plain from a bit of history not made by his opinions:

To pay tribute to the work of Father Lawless, lay Catholic Collins Seitz addressed the commencement exercises at Salesianum in early June of 1951—an event that on its face should have been no more newsworthy than 10,000 other

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<sup>1</sup> *Parker v. University of Delaware*, 31 Del. Ch. 381, 75 A.2d 225 (1950).

<sup>2</sup> *Belton v. Gebhart*, 32 Del. Ch. 343, 87 A.2d 862, *aff'd*, 33 Del. Ch., 144, 91 A.2d 137 (1952), *aff'd sub nom.* 347 U.S. 483 (1954).

<sup>3</sup> R. KLUGER, *SIMPLE JUSTICE* 449 (1976).

<sup>4</sup> "I classify under courage those activities that are directed solely to the advantage of the agent, and those that are directed to the advantage of another I classify under nobility. So self-control, sobriety, and resourcefulness . . . are kinds of courage; Courtesy . . . and Mercy . . . are kinds of nobility." B. SPINOZA, *THE ETHICS*, Part III, Prop. 59, *reprinted in* B. SPINOZA, *THE ETHICS AND SELECTED LETTERS* 141 (S. Shirley trans., S. Feldman ed. 1982).

such graduation-day speeches given at that time of year across America. But the words of the vice chancellor of Delaware proved electric. He spoke out, as he was wont to do in his court opinions, with clarity and directness on a subject that was one of Delaware's great taboos—the subjugated state of its Negroes. What made Seitz's words more than rhetoric was the risk they entailed for their speaker: the vice chancellor had just been nominated by the governor to become the new chancellor of Delaware—an appointment that had to be approved by the State Senate. And the Senate remained, as it had historically been, in the grip of anti-black downstaters.<sup>5</sup>

To those who are aware of this history, it comes as no surprise that, many years before the Judicial Conference of the United States went on record in favor of the adoption of affirmative action plans for court personnel, Chief Judge Seitz had such a plan in operation in his court.

## II

In 1980 Congress passed a statute establishing a formal mechanism for considering complaints of misconduct or disability against federal judges and magistrates.<sup>6</sup> Bills on this subject had been vigorously opposed by many federal judges since Watergate and its attendant concern for public accountability revived the legislative effort. Congress sought to accommodate concerns about separation of powers and judicial independence by fashioning a vehicle for self-regulation and by hewing as closely as possible to the existing model of decentralized judicial administration.<sup>7</sup>

The efforts of the judicial councils of the circuits in implementing this statute to date are, on the whole, seriously deficient. Quite apart from the councils' rules, their rulemaking processes and provisions for public information bespeak insularity and lack of candor.<sup>8</sup> The Third Circuit Judicial Council, led by Chief Judge Seitz, has proved a notable exception. Chief Judge Seitz retained reporters to assist the council in drafting rules; he established a special committee, including members

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<sup>5</sup> R. KLUGER, *supra* note 3, at 432.

<sup>6</sup> Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, Pub. L. No. 96-458, 94 Stat. 2035 (1980) (effective Oct. 1, 1981).

<sup>7</sup> See Burbank, *Procedural Rulemaking Under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980*, 131 U. PA. L. REV. 283, 291-308 (1982).

<sup>8</sup> See *id.* at 340-43.

of the bar, to work with the reporters and to make recommendations to the Council; he caused a draft of the rules with commentary to be published for comment; and he ensured that the rules approved by the Council were made widely available (they have recently been published with the rules and procedures of the Court of Appeals and the Judicial Council).

As one of the reporters of the Third Circuit Council's rules, I was impressed by the clarity of Chief Judge Seitz's vision that public accountability need not be inconsistent with—and indeed may help to ensure—judicial independence. Since that time, I have come to realize that, however unusual his efforts in the context of implementing this statute, they were but the logical extension of his quest for broadly based consultation in the formulation of procedure and for the public accessibility of consequential legal rules and policies.<sup>9</sup>

Collins Seitz once taught at this school. Student evaluations, if they ever existed, do not survive. But those of us who have been fortunate to know Chief Judge Seitz—through his opinions and in person—are all his students. He teaches us that it is still possible for one decent and clear-thinking individual to make a difference. In honoring Collins Seitz, we thank him as well for imparting more effectively than any course could this most important lesson.

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<sup>9</sup> See Burger, *Collins Seitz and Judicial Administration*, 132 U. PA. L. REV. 1284 (1984).